



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Atlantic Systems Research & Engineering
International, Inc.

File: B-239744

Date: June 7, 1990

James S. Roberts, Esq., Sirote & Permutt, P.C., for the
protester.

Catherine M. Evans, and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protest against award to lower-priced offeror is untimely
when not filed within 10 working days after protester
received written and oral notification of awardee's prices
and basis of award; request for debriefing in order to
determine exact nature of contracting officer's alleged
error does not toll running of 10-day timeliness period.

DECISION

Atlantic Systems Research & Engineering International, Inc.,
protests the award of a contract to Quantum Research, Inc.,
under request for proposals (RFP) No. DAHC35-89-R-0034,
issued by the Department of the Army for data collection
support services. Atlantic principally alleges that the
contracting officer made an error in calculating Atlantic's
labor rates, which improperly rendered Quantum and not
Atlantic the low offeror.

We dismiss the protest as untimely.

The Army notified Atlantic of the proposed award to Quantum
on February 26, 1990. On February 27, Atlantic requested a
debriefing. The Army informed Atlantic that a debriefing
would be scheduled after award. On March 22, the Army
informed Atlantic by letter of the award prices for the
three line items awarded. Upon receipt of this letter on
March 27, Atlantic telephoned the contracting officer to
repeat its request for a debriefing and to inquire about the
evaluation process. During this conversation, the con-
tracting officer stated that the proposals were judged

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technically equal and that the award thus was made to the low-priced offeror. The contracting officer also stated that, as the price evaluation involved a comparison of the offerors' labor rates in three labor categories, he had used a "straight-line" averaging method to compare the rates; he specifically stated that a weighted averaging method was not used. The contracting officer also denied Atlantic's request for a debriefing on the basis that a debriefing is only warranted in the case of technical, not price, issues.

On March 30, Atlantic wrote to the contracting officer to request additional information about the price evaluation. In this letter, Atlantic stated that it had "examined several cost alternatives based on delivery orders in the RFP" and that it believed its prices were lower than Quantum's prices. Atlantic then was granted a debriefing after appealing to the contracting officer's supervisor on April 5; the debriefing took place on April 25. At the debriefing, the contracting officer demonstrated the calculation he used to evaluate the labor rates, a simple average of all offered rates. Upon seeing the calculation, Atlantic objected that the method inadvertently weighted some of its rates, causing its total price to appear higher than Quantum's price.^{1/} Atlantic filed an agency-level protest on May 1. On May 7, the contracting officer dismissed the protest as untimely, concluding that Atlantic knew of its basis for protest on March 27. Atlantic protested this decision to our Office on May 18.

Our Bid Protest Regulations require that protests be filed not later than 10 days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1990). Our Regulations also provide that a matter initially protested to an agency will be considered only if the initial protest to the agency was filed within the time limits for filing a protest with our Office. 4 C.F.R. § 21.2(a)(3). Thus, to be timely under our Regulations, Atlantic's agency-level protest would have to have been filed within 10 working days after it learned of the basis of its protest. If an offeror is provided a specific basis for proposal rejection, a protest of the rejection must be filed within 10 days thereafter; a protester may not delay filing its protest until receipt of information confirming the existence of protestable issues. See Ahtna, Inc., B-235761.3, B-235761.4, Dec. 1, 1989, 89-2 CPD ¶ 507.

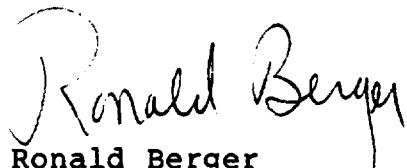
^{1/} The record does not reveal whether a similar "inadvertent weighing" would also have occurred with regard to Quantum's labor rates.

Atlantic was informed on March 27 of Quantum's prices and the contracting officer's method of evaluating those prices. While Atlantic did not know the nature of the contracting officer's alleged error in averaging its labor rates, it is clear from the March 30 letter to the contracting officer that, based on the information already available, Atlantic believed its prices were lower than Quantum's prices. Since it also had been informed that the selection was based on price, we think its grounds for protest arose at that time.

Atlantic claims it did not know of its basis for protest until April 25, when the contracting officer demonstrated his straight-line averaging method. Atlantic contends that until that time, it did not possess facts sufficient to create a legitimate basis for protest because it could not have known how the error occurred. We disagree.

While Atlantic may have needed more specific information to effectively challenge the results of the Army's cost evaluation, such information clearly was not necessary to raise a challenge to the evaluation in the first place. Atlantic knew on March 27 of Quantum's prices for each of the three line items awarded, and knew that the contracting officer did not weight any labor rates in arriving at those prices. It therefore should have been apparent to Atlantic, upon a comparison of Quantum's award prices to its own proposed prices, that some error had occurred. Indeed, Atlantic indicated its awareness of this possibility in its letter of March 30.

We conclude that since Atlantic did not protest within 10 days of March 27, the protest is untimely. It therefore is dismissed.



Ronald Berger
Associate General Counsel